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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 409

AMERICAN SNUFF COMPANY, AND MARTIN J. CONDON, INDIVIDUALLY AND AS PRESIDENT OF THE AMERICAN SNUFF COMPANY, *Petitioners*

v.

NATIONAL LABOR RELATIONS BOARD

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The *per curiam* opinion of the court below, incorporated in its judgment (R. 62), is reported at 196 F. 2d 1019. The oral opinion (R. 47-49) of the district court is unreported.

JURISDICTION

The judgment of the court below was entered on May 27, 1952 (R. 62). A petition for rehearing, filed by petitioners on June 12, 1952 (R. 62-68), was denied on September 5, 1952 (R. 68). The petition for a writ of certiorari was filed on October 22, 1952. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether a district court may require an employer, against whom an unfair labor practice complaint has been issued, to comply with a subpena calling for the production of records at a hearing before the Board, without permitting the merits of the complaint to be litigated in the subpena enforcement proceeding in the district court.

STATUTE INVOLVED

The pertinent portions of Section 11 of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V, 151, *et seq.*), are set forth in the Appendix, *infra*, pp. 9-10.

STATEMENT

Based on a charge filed on September 6, 1950, by United Steelworkers of America, CIO (R. 68), and following an investigation of the charge (R. 36-40), a complaint was issued by the Board's General Counsel against petitioner Company on

January 16, 1952, alleging that it had violated Section 8 (a) (1) of the Act, by engaging in certain acts of interference, restraint, and coercion on and after March 6, 1950, and had violated Section 8 (a) (1) and (3) of the Act by denying employment, on or about July 17, 1950, to named employees because of their membership in the Union and participation in a strike (R. 69-75). Simultaneously with the issuance of the complaint, the Company was notified that a hearing would be held before a trial examiner of the Board commencing on March 3, 1952 (R. 76). The Company answered, admitting that it was subject to the Board's jurisdiction, but denying the other allegations of the complaint (R. 21).

On January 30, 1952, the Board issued two subpenas *duces tecum*, one directed to the Company, and the second to its president, petitioner Martin C. Condon, directing them to produce at the hearing (R. 77-79):

> All payrolls, personnel and other records of American Snuff Company showing the names, dates and job classifications of each and every hire, resignation, discharge or other termination or change of employment status of employees or applicants for employment at the American Snuff Company for each and every week commencing with the workweek immediately preceding January 13, 1950, to the present date.

On February 5, 1952, petitioners moved to quash the subpenas (R. 4). The motions were denied by the trial examiner on February 12 (R. 4-5). At the hearing on March 3, petitioners refused to comply with the subpenas (R. 5-6), and since the records requested were deemed necessary to the trial of the case, the trial examiner adjourned the hearing to permit the institution of subpena enforcement proceedings (R. 47).

An application to enforce the subpena was filed in the United States District Court for the Western District of Tennessee, Western Division, on March 3 (R. 1-8). On March 4 the Court issued a "Rule to Show Cause" (R. 24-25); petitioners answered on March 6 (R. 8-24); and a hearing was held before the Court on March 7 (R. 30-57).

In their answer to the subpena enforcement application (R. 8-24), and in supporting testimony (R. 32-45), petitioners attempted to show that the charge filed by the Union was not sufficiently particularized; that the strike involved in the proceeding before the Board had been conducted improperly; that some of the strikers had been reinstated; that other strikers had been permanently replaced or their jobs eliminated; that sufficient information had been given or proffered to the regional agents of the Board during the pre-complaint investigation; and that the material sought under the subpena related to

"alleged unfair labor practices barred by the Statute of Limitations and the Act and/or occurring subsequent to the date of the Charge filed against American Snuff Company" (R. 23).

Thereafter, the District Court held that an order should issue requiring petitioners to comply with the subpenas. The court stated that the question of enforcing the subpenas is "confided to the discretion of the Court," and that such enforcement should be ordered "where the evidence sought is not plainly incompetent or irrelevant" to the inquiry before the Board (R. 48). The court observed that (*ibid.*):

> * * * the issues specifically before the Trial Examiner are whether the [petitioners] are engaging in unfair labor practices under the law, and especially in discriminating against certain employees with respect to their employment.
>
> * * * * * *
>
> The evidence sought by the Board through its subpena the Court feels sure relates to or touches the issues in the pending controversy, and that is all that is necessary. The records in question, in the Court's opinion, will definitely throw light on the question of [petitioners'] whole policy with respect to the matters in controversy, especially on the discrimination issue. In fact, the Court can't

> see how the issues before the Trial Examiner can be developed at all without the documents and records here sought.

The court concluded that the defenses going to the merits of the complaint relate to the "principal controversy" before the Board, and that the court "has no right, and is not passing on the merits of the principal controversy one way or another. This is only a side issue, an ancillary proceeding * * *. Most of the matters * * * urged on the Court by [petitioners] are matters which should be presented to the Labor Relations Board. The scope of inquiry here is very narrow" (R. 48-49). Accordingly, on March 12, 1952, the district court issued its order requiring obedience to the subpenas (R. 26-27).

On appeal, the court below affirmed the order of the district court in a *per curiam* opinion (R. 62).

ARGUMENT

Asserting that the charge is insufficiently particularized to support the complaint, that the complaint alleges unfair labor practices barred by the six-month period of limitations, and that the strikers have been permanently replaced without discrimination, petitioners contend that the complaint issued by the Board's General Counsel is without merit. They urge that, for this reason, compliance with the subpenas should not be

ordered, and that the district court on a subpena enforcement proceeding is the appropriate forum in which to litigate the merits of their defense.

It is clear, however, that determination of the merits of an unfair labor practice complaint is confided by the Act to the Board in the proceeding before it, and that the district court in enforcing a subpena is to go no further than to determine whether the data demanded are relevant to an inquiry the Board is authorized to conduct. *Oklahoma Press Publishing Co.* v. *Walling*, 327 U. S. 186; *Endicott Johnson Corp.* v. *Perkins*, 317 U. S. 501, 507-509; *Cudahy Packing Co.* v. *National Labor Relations Board*, 117 F. 2d 692, 694 (C. A. 10); *National Labor Relations Board* v. *Northern Trust Co.*, 148 F. 2d 24, 27, 28 (C. A. 7), certiorari denied, 326 U. S. 731; *Bland Lumber Co.* v. *National Labor Relations Board*, 177 F. 2d 555, 557 (C. A. 5); *Hamilton* v. *National Labor Relations Board*, 177 F. 2d 676, 677 (C. A. 9); *Walling* v. *Standard Dredging Corp.*, 132 F. 2d 322 (C. A. 2); *Martin Typewriter Co.* v. *Walling*, 135 F. 2d 918, 919 (C. A. 1). See also *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 50. The records sought by the Board's subpenas are, as the district court found, reasonably particularized and clearly relevant to the substantive issues that the Board is authorized to decide. Accordingly, whether or not the Board (or a reviewing court) should ultimately sustain the Company's defenses

to the complaint, the district court properly granted enforcement of the subpenas. Petitioners' contrary view presents no substantial question requiring review. No conflict of decisions is claimed, and none exists.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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December, 1952.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V, 151, *et seq.*), are as follows:

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) * * * The Board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application. Within five days after the service of a subpena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Board to revoke, and the Board shall revoke, such subpena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpena does not describe with sufficient particularity the evidence whose production is required. * * *

(2) In case of contumacy or refusal to obey a subpena issued to any person, any district court of the United States or the United States courts of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

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FILED
DEC 23 195

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NATIONAL LABOR RELATIONS BOARD, *Respondent*.

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